

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

:  
:  
:  
:  
:

v.

**C.A. No. T19-0014  
19408502286**

**TERRY RIGNEY**

**DECISION**

**PER CURIAM:** Before this Panel on August 21, 2019—Magistrate DiChiro (Chair), Administrative Magistrate Abbate, and Magistrate Kruse Weller, sitting—is Terry Rigney’s (Appellant) appeal from a decision of Associate Judge Lillian M. Almeida (Trial Judge) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-26-5, “Duty in accident resulting in damage to highway fixtures.”<sup>1</sup> The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**I**

**Facts and Travel**

On March 27, 2019, Officer Ariel Vega (Officer Vega) of the Pawtucket Police Department responded to a call from dispatch reporting that a truck struck a telephone pole. (Tr. At 16:11-14.) Officer Brian Beech (Officer Beech) of the Pawtucket Police Department subsequently located a vehicle matching the description reported by dispatch. Officer Beech identified the driver of vehicle as Appellant and issued Appellant the above-reference citation. *See* Summons No. 19408502286.

---

<sup>1</sup> Appellant was also charged with violating § 31-26-4, “Duty to stop in accidents resulting in damage to unattended vehicle.” *See* Summons No. 19408502286. However, the Trial Judge dismissed this charge, finding insufficient evidence to sustain the violation. Therefore, this Decision omits all testimony referencing facts pertinent to a violation of § 31-26-4, and includes only testimony relevant to the charge of § 31-26-5.

Appellant contested the charged violation, and the matter proceeded to trial on June 12, 2019. *See* (Tr. at 1.) At trial, Officer Vega testified first. Officer Vega testified that on the day of the incident, dispatch advised her that a truck struck a telephone pole and that “a Trans Am tractor trailer was last seen heading on Cottage Street.” *Id.* at 16:11-16. Thereafter, Officer Rui Silva and Officer Beech responded to the area to check for the vehicle. *Id.* at 16-18. Officer Vega responded to the scene of the accident at the intersection of Archer Street and Maplecrest Drive and “observed that the telephone pole was split into two pieces.” *Id.* at 16:18-20. Officer Vega stated that the “top half was being held up by electrical wires” and that “[o]ne wire had fallen across Archer Street blocking the road.” *Id.* at 16:21-25. Thus, Officer Vega secured the scene and waited for National Grid, the owner of the telephone pole. *Id.* at 18:9-10. On cross-examination, Officer Vega testified that she did not actually observe Appellant’s vehicle—or any vehicle—strike the telephone pole. *Id.* at 28:8-10.

Officer Beech also testified at trial. Officer Beech testified that on March 27, 2019, at approximately five-thirty in the morning, he was dispatched to the area of Cottage Street “in an attempt to locate a tractor trailer truck call on Archer Street.” *Id.* at 35:23-36:1. Dispatch advised Officer Beech that “the vehicle in question had Trans Am on the side of it.” *Id.* at 36:18-20. As Officer Beech turned onto Cottage Street, he saw a tractor trailer “approaching us about a mile and a half away from Archer Street, and it had Trans Am on the side.” *Id.* at 36:20-24. Officer Beech then conducted a traffic stop of the vehicle, spoke to the operator—identified as Appellant—and explained the reason for the stop. *Id.* at 36:24-37:2. Appellant told Officer Beech that “he was on Archer Street and his GPS took him that way.” *Id.* at 37:17-21. Appellant also told Officer Beech that “he had no idea that he hit anything.” *Id.* at 38:21-22. Thereafter, Officer Beech and Appellant looked at the exterior of Appellant’s vehicle and saw

“fresh scratches” on the side of the truck. *Id.* at 38:22-25. Officer Beech then collected Appellant’s information and reported that information to Officer Vega. *Id.* at 40:1-3. Officer Vega then issued Appellant a citation. *Id.* at 18:13-21.

After hearing the evidence presented at trial, the Trial Judge recounted the testimony and stated her findings of fact on the record. The Trial Judge concluded, based upon the testimony, that Appellant operated the vehicle that struck the telephone pole. *Id.* at 77:9-10. In addition, the Trial Judge concluded that Appellant’s vehicle struck the telephone pole based upon Appellant’s admitting to being in the area at the time and the fact that the damage to Appellant’s vehicle is consistent with striking an object. *Id.* at 77:12-21. Accordingly, the Trial Judge found Appellant guilty of violating § 31-26-5. *Id.* at 79:8-10.

Thereafter, Appellant filed a timely appeal. Forthwith is this Panel’s decision.

## II

### Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and

substantial evidence on the whole record; or  
“(6) Arbitrary or capricious or characterized by abuse of  
discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mutual Insurance Company v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Environmental Science Corporation v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s or magistrate’s conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

On appeal, Appellant argues that the Trial Judge’s decision sustaining the charged violation is “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record;” and “[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 31-41.1-8(f)(5)-(6). Specifically, Appellant avers that (1) the evidence presented at trial is insufficient to sustain the charged violation, and (2) Appellant’s Sixth Amendment right to cross-examine witness was violated.

### A

## Sufficiency of the Evidence

It is well-settled that this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Liberty Mutual Insurance Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). During the “fact-finding process, the trial justice may ‘draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.’” *Id.* A trial justice’s reasonable inferences are “entitled to great weight and will not be overturned unless the factual finding[s] [are] clearly wrong or unless the trial court overlooked or misconceived material evidence.” *Norton v. Courtemanche*, 798 A.2d 925, 932 (R.I. 2002) (quoting *Walsh v. Cappuccio*, 602 A.2d 927, 930 (R.I. 1992)).

Here, Appellant is charged with violating § 31-26-5, which provides:

“The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property of the fact and of his or her name and address and of the registration number of the vehicle the driver is driving.”  
Sec. 31-26-5.

Thus, in order to sustain a violation under § 31-26-5, there must be clear and convincing evidence that Appellant damaged a highway fixture and failed to locate and notify the appropriate parties. *See id.*; Traffic Trib. R. P. 17(a) (the prosecution must prove the charged violation by “clear and convincing evidence”).

Based on a review of the record, this Panel is satisfied that clear and convincing evidence exists supporting the Trial Judge’s decision that Appellant struck the telephone pole and left the scene. *See* Traffic Trib. R. P. 17(a). First, the testimony reveals that Appellant’s vehicle Trans Am tractor trailer—was found near the scene of the accident shortly after the accident occurred,

and matched the description of the vehicle provided by dispatch.<sup>2</sup> Second, Officer Beech testified that after he stopped Appellant's vehicle, Appellant stated that he had been driving on the street where the accident occurred. *Id.* at 37:17-21. Additionally, Officer Beech observed "fresh scratches" on the passenger side of Appellant's vehicle, and noted that it looked like "dirt was removed." *Id.* at 38:23-25; 39:12-14. In officer Beech's experience, the damage to Appellant's vehicle was "very similar to rubbing up against a telephone pole if you take the corner too tight." *Id.* at 48:19-22. Officer Beech also testified that rubbing against a telephone pole could cause a telephone pole to split in half. *Id.* at 49:2-6.

Accordingly, there is sufficient evidence on the record from which the Trial Judge could reasonably infer that Appellant's vehicle struck the telephone pole. *See State v. Golden*, 430 A.2d 433, 438 (R.I. 1981) ("[A]n 'inference' is a deduction that the trier of fact is entitled to make from a proven or admitted fact . . . based upon some evidence, direct or circumstantial[.]"). Therefore, the Trial Judge did not err in finding that Appellant guilty of the charged violation. *See DeSimone Electric, Inc., v. CMG, Inc., et al.*, 901 A.2d 613, 621 (R.I. 2006) (a trial judge's or magistrate's reasonable inferences "are entitled on review to the same weight as other factual determinations").

---

<sup>2</sup> Appellant argues that Officer Vega's testimony regarding what dispatch relayed to her is inadmissible hearsay testimony. Under Rule 801(c) of the Rhode Island Rules of Evidence, hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *Powers v. Coccia*, 861 A.2d 466, 469 (R.I. 2004) (*citing* R.I. R. Evid. 801(c)). Statements "not offered to prove the truth of what they assert are not hearsay and as such do not require the assistance of an exception to the hearsay rule in order to be admissible." *State v. Gomes*, 764 A.2d 125, 131 (R.I. 2001) (*citing In re Jean Marie W.*, 559 A.2d 625, 629 (R.I. 1989)). Further, the Rhode Island Supreme Court has held that an officer may testify about a message received through dispatch, when "[t]he entire purpose of [the] testimony [is] to show why [an officer] apprehended [a] defendant[,] . . . because the radio message [is] not offered to prove the defendant's guilt." *Id.* (*quoting State v. Palmigiano*, 112 R.I. 348, 359, 309 A.2d 855, 862 (1973)). Therefore, the testimony regarding the information relayed by dispatch is non-hearsay testimony because it is not offered to prove the truth of the matter asserted.

## B

### **Sixth Amendment Right to Cross-Examine Witnesses**

Appellant asserts that his Sixth Amendment right to confront and cross-examine witnesses was violated because he was not afforded the opportunity to cross-examine the eye witness who reported the incident to dispatch. The Sixth Amendment to the United States Constitution as incorporated through the Fourteenth Amendment, as well as Article 1, Section 10 of the Rhode Island Constitution, guarantees a defendant's right to a fair trial. *See* U.S. CONST. amend. VI; R.I. CONST. art. 1, § 10. The right to a hearing has been interpreted by our Supreme Court to include an "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *State v. Oliveira*, 774 A.2d 893, 923 (R.I. 2001) (internal citation omitted). A defendant must be afforded a "full opportunity to establish the best and fullest defense available to him [or her]." *State v. Lomba*, 37 A.3d 615, 621 (R.I. 2012). The ability of a defendant to "meaningfully cross-examine the state's witnesses is 'an essential element'" of the due process right to present a defense. *State v. Doctor*, 690 A.2d 321, 327 (R.I. 1997). This constitutional guarantee of procedural due process assures that there will be fair and adequate legal proceedings. *Germane*, 971 A.2d at 574.

The record reveals that Appellant had the opportunity to cross-examine all witnesses presented by the prosecution. As the prosecution did not present the eye witness who reported the incident to dispatch, the Appellant could not cross examine that witness. However, the Appellant's constitutional rights were not violated because the prosecution is not required to present any and all eye witnesses that may exist. Indeed, Appellant's Sixth Amendment right to cross-examine witnesses is limited only to those witnesses presented at trial. Here, the prosecution presented only Officer Vega and Officer Beech, and Appellant's counsel cross-

examined each officer. Accordingly, this Panel is satisfied that Appellant's constitutional rights have not been violated.

## IV

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; nor arbitrary, capricious, or an abuse of discretion. Sec. 31-41.1-8(f)(5)-(6). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

---

Magistrate Michael DiChiro (Chair)

---

Administrative Magistrate Joseph A. Abbate

---

Magistrate Erika L. Kruse Weller

DATE: \_\_\_\_\_